IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 769 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY RAMBHAI GADHVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 769 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/01/2002

ORAL JUDGEMENT

The petitioner came to be externed by virtue of an order passed by the Deputy Commissioner of Police, Rajkot City on March 4, 2001 in exercise of powers under Section 56A of the Bombay Police Act. The authority

initially issued a notice under Section 59 of the Bombay Police Act, stating therein the allegations in general against the petitioner, wherein two registered offences and statements of three anonymous witnesses were indicated. The notice was replied to by the petitioner (Annexure "B"). The authority, after following due procedure, passed the impugned order observing various criminal activities of the detenu as stated in the order. Amongst other activities, the authority considered that the petitioner is involved in eve-teasing and activity of getting rental houses vacated under coercion. Ultimately, the petitioner came to be externed from the areas as stated in the order.

2. The petitioner challenged the order before the appellate authority. The appellate authority after giving hearing, passed an order on 2nd Aug. 2001, dismissing the appeal and confirming the order of externment. Aggrieved by the said order, present petition under Art. 226 of the Constitution of India is preferred.

3. Learned Advocare Mr. Ashish D. Oza appearing for the petitioner has restricted his argument to the fact that the order is passed on grounds which were not stated in the notice and for which there is no material. He submitted that there is nothing to indicate that the petitioner is involved in eve-teasing or getting the rental houses vacated under coercion. For this, neither notice is given, nor there is any material. Therefore there is non-compliance of Sec. 59 of the Bombay Police Act. The satisfaction recorded by the authority for externing the petitioner is therefore without any basis and on the basis of extraneous material. The order of externment would therefore vitiate and the petition may therefore be allowed.

4. The petition is opposed to by learned APP Mr. D.P. Joshi.

5. Having regard to the contentions raised before this Court, it is amply clear from reading of the notice as well as the order that in the allegations stated in the notice there is no reference to the activity of eve-teasing or the activity of getting the rental houses vacated under coercion. The petitioner therefore was not afforded an opportunity as to why he should not be externed on this ground. Thus, there is non-compliance of Sec. 59 of the Bombay Police Act, qua the activities alleged of the petitioner. The order is therefore, not based on any material to indicate such activity.

Differently put, the order is based on extraneous material considered by the authority while passing the order. Order therefore would stand vitiated.

6. The petition is therefore, allowed. Order of externment dated 4.3.2001 passed by the Deputy Commissioner of Police, Rajkot City and the order of the appellate authority both are hereby quashed and set aside. Rule made absolute. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas